Supreme Court, U.S.
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No. 84-232

In The

SUPREME COURT OF THE UNITED STATES

THE TRUSTEES OF THE UNIVERSITY
OF
PENNSYLVANIA,

Petitioners

v.

THE SANSOM COMMITTEE,

Respondent

On Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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24pp

QUESTION PRESENTED

Whether a federal district court is powerless to enter and enforce a consent decree resolving a dispute raising a federal question.

PARTIES

The litigants before the Court of Appeals for the Third Circuit were the Sansom Committee, which was a plaintiff in the District Court, a party to the Consent Decree, the responding party in one of the motions and the moving party in two of the motions that are the subject matter of this Petition for Certiorari, and the appellee in the Court of Appeals, and The Trustees of the University of Pennsylvania, an intervening party for purposes of the Consent Decree entered by the District Court, the moving party in one of the motions and the

responding party in two of the motions that are the subject matter of this petition for and the appellant in the Court of Appeals. Counsel for the Redevelopment Authority of the City of Philadelphia, a defendant in the District Court, entered an appearance but did not participate in the proceedings before the Court of Appeals.

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COUNTERSTATEMENT OF THE CASE

The Petition for Certiorari involves a consent decree entered as a judgment of the United States District Court for the Eastern District of Pennsylvania to settle claims brought under the National Housing Act of 1949 ("NHA"), 42 U.S.C. §1441 et seq., and the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §4321 et seq.

The Sansom Committee, a committee of concerned citizens living in and using the historical rowhouses which comprise the 3400 Sansom-Walnut block of Philadelphia, brought suit in 1973 in an effort to preserve their environment. (A-3) The Committee sought to save the buildings on this block from demolition, rehabilitate them, and preserve the existing mix of residential and commercial use. (A-3).

The 3400 Sansom-Walnut block had been acquired by The Redevelopment Authority of the City of Philadelphia (the "Redevelopment Authority") by condemnation. The Redevelopment Authority, in conjunction with the Department of Housing and Urban Development ("HUD") planned to demolish the buildings and sell the land to the University of Pennsylvania for redevelopment. Under the proposed redevelopment plan, the university would then transfer its redevelopment rights to a commercial developer who planned to build a high rise building.

In its complaint, the Committee charged that the redevelopment plan and the process by which it was approved violated federal law. (A-4) The district court assumed subject matter jurisdiction over these claims pursuant to sections 1331 and 1361 of Title 28 of the United States

Code. The Sansom Committee v. Lynn, 366 F. Supp. 1271, 1278-80 (E.D. Pa. 1973.)

Early in the course of this litigation, the Sansom Committee preliminarily moved to enjoin demolition of the block facing Walnut Street and subsequently the portion of the block facing Sansom Street. The University participated in those proceedings although the district court did not allow it to intervene as a party at that stage, noting that its denial of intervention did not preclude the University's later intervention. Although the Committee was unseccessful in blocking demolition of the Walnut Street block, the district court granted the Committee's motion to enjoin termination of the Sansom Street leases, staying that block's threatened destruction.

Following the district court's issuance of the of the preliminary injunction, the Redevelopment Authority, the University and the Committee began settlement negotiations. Obviously at this point, the University, which claimed to have redevelopment rights to the properties, was an essential party. Finally in 1976, the Sansom Committee and the Agencies submitted a stipulation to the court asserting that they had "engaged in serious and fruitful settlement negotiations in consultation with the University of Pennsylvania" to resolve the dispute. (A-4) This resolution would, if implemented, resolve the federal claims of the plaintiffs and involved a new plan for the redevelopment of the block. Since the planned resolution of the federal claims directly affected property interests of the University, it was necessary for the University to participate in the settlement. The court approved this method of resolving the dispute. (A-4).

In December 1980, the parties finalized a settlement, and the district court entered a consent decree containing the terms of the settlement. The University consented to the court's in personam jurisdiction and participated as a party to the Agreement and as a signatory to the Consent decree. At that point, the University, the other parties to the consent decree, and the court agreed that the district court would retain jurisdiction to enforce the decree and that any party to the decree could move to enforce it. (A-4).

Unfortunately the entry of the consent decree did not bring peace, and in 1982, the Sansom Committee sought judicial enforcement of the decree. More negotiations followed and led to a second, more detailed consent decree. Like the first consent decree, the second decree provided that the court would retain jurisdiction for purposes

of enforcement. (A-5).

After the approval and entry of the second Court-Ordered consent decree, disputes arose. This time it was the University who first moved for enforcement of the decree it had entered, moving for an Order entitling it to purchase some of the properties by redesignating it as the developer. (A-5) The court denied this attempt by the University to renege on its commitments. The court subsequently entered two additional Orders seeking to preserve the status quo of its Consent Decree pending the University's appeal of the denial of the motion for redesignation. The University also appealed the two Orders which sought to preserve the status quo.

On appeal of those Orders to the Third Circuit in 1983, and only after it had lost in all actions to enforce the decrees

instituted by either side, the University raised the question of subject matter jurisdiction. (A-5) As the Court of Appeals pointed out, "The University's principal argument is that the district court had no jurisdiciton to enter the 1980 Consent Decree because its terms incorporated essentially state law relief." (A-6).

The Third Circuit rejected the University's challenges to the jurisdiction of district court pursuant to Pacific Railroad v. Ketchum, 101 U.S. 289 (1879), and other case law. After analyzing the unique factual background and procedural history of this case, the Court of Appeals concluded that the district court had federal question jurisdiction over the dispute both at the inception of the lawsuit in 1973, and at the time the consent decrees were approved (A-6). The Third Circuit found that the consent decree which provided that the

properties be rehabilitated with maximum participation by interested members of the public "was directly responsive to the Committee's complaint under" the NHA and NEPA. (A-8) Accordingly, under the teachings of Pacific Railroad and its progeny, it was clearly within the federal court's jurisdiction to implement the consent decrees. The doctrines of ancillary and pendant jurisdiction were simply not implicated. (A-6-9)

REASONS FOR DENYING THE WRIT

1. As the Third Circuit Properly Concluded, The Enforcement Of This Consent Decree Does Not Implicate Issues Of Pendent And Ancillary Jurisdiction, And The Decision Below Is Not In Conflict With Any Decisions Of This Court

The issue presented by this lawsuit is whether a federal District Court has the power to enforce a consent decree entered in litigation properly before it against a party over whom the Court has per-

sonal jurisdiction. The answer is plain and does not raise issues of sufficient uncertianty so as to merit the attention of this Court.

In Pacific Railroad v. Ketchum, 101 U.S. 289, 297 (1879), this Court held:

> Parties to a suit have the right to agree to anything they please in reference to the subject-matter of their litigation, and the court, when applied to, will ordinarily give effect to their agreement, if it comes within the general scope of the case made by the pleadings.

The issue raised in this case is not one involving the outer limits of federal subject matter jurisdiction, but instead the highly fact-specific issue of whether the settlement agreement and the consent decree which embodied it came within the general scope of the particular case made by the pleadings. The Court of Appeals, while recognizing that some consent decrees may be beyond the power of a federal court to approve and that a district court cannot

wield its equity power beyond the realm of its subject matter jurisdiction (A-7), found that in this case the district court had not exceeded its jurisdictional limits.

The Third Circuit concluded that the district court properly determined that the settlement agreement was in fact directly responsive to the Committee's complaint charging lack of public participation in the redevelopment process as required by law. As Chief Judge Seitz stated:

> [U]nder the 1980 Consent Decree, the properties would be rehabilitated with maximal participation by interested members of the public. This is consonant with the general policies and goals of NEPA...and of the NHA...

(A-8) As such, the district court was empowered to enter and enforce the settlement as a decree of the court.

Neither the participation of the

University in the consent decree nor the enforcement of that decree against it raises any issue of subject matter jurisdiction. What the University's Petition ignores is the fact that absent the University's involvement in the agreement and the University's inclusion in the court decree, the federal goals of maximum participation by interested members of the public could not be achieved. Simply put, the case was indisputably brought as a case setting forth a federal question. Federal question jurisdiction was challenged but sustained by the district court in 1973, and that determination was not appealed. Federal issues and concerns remained at the time the settlement agreement was brought before the court for its approval. The court properly determined, as had the parties themselves, that the University's presence was required to reach a proper and full resolution of the federal issues before the court. The University freely participated in this resolution.

To raise the spectre that a federal district court is powerless to resolve a dispute properly before it by giving effect to a meaningful resolution reached by all affected parties is to chill potential federal plaintiffs from exercising their federal rights in federal court. No litigant will choose to effectuate his rights in a judiciary powerless to resolve those rights and to enforce that resolution. See Local Loan Co. v. Hunt, 292 U.S. 234, 239 - 241 (1934). Aware that summary enforcement of a settlement reached to resolve a federal case is not available, and that enforcement requires the institution of a separate lawsuit in the frequently crowded state court system for breach of contract, federal litigants will think more than twice whether it is possible to reach a just resolution of their dispute in the federal court system.

If the University's inclusion in the

consent decree raises a question of jurisdiction at all, it is an easily resolvable question of personal jurisdiction. (See A-8-9; Becker, J. concurring at A-10). The University's voluntary participation in the Consent Decree clearly represented a waiver of any objection it may have had to the Court's jurisdiction of it.

The University's assertion that the Third Circuit's ruling conflicts with this Court's previous decisions in the areas of ancillary and pendent jurisdiction is a disingenuous attempt by the University to expand the limited scope of the Third Circuit's opinion. Neither of these doctrines has any bearing upon this matter at all. All three Third Circuit Judges agreed that the dispute does not raise an issue of an ancillary or pendent jurisdiction. (A-6, n.4; Garth, J., dissenting at A-31, n. 6). Moreover, this case does not involve a question of pendent-

party jurisdiction either. That doctrine involves the assertion of subject matter jurisdiction over a non-diverse defendant involving a state-law question. Here the fact that the University is non-diverse makes no difference, since jurisdiction of the claim is based upon a federal question, not on the parties being of diverse citizenship. The University through slight-of-hand is trying to confuse the dual nature of a consent decree as both a contract and a judgment of the court to characterize the court's Orders as resolutions of state law claims. Certainly, settlements are contracts whose validity is determined by state law. A consent decree, however, is more. It is the judicial resolution of a claim, in this case, a claim raising federal questions.

Moreover, even if ancillary jurisdiction were relevant to the analysis, the assertion of jurisdiction over the University

in this case fully satisfies the traditional requirements for such jurisdiction as set forth in Aldinger v. Howard, 427 U.S. 1 (1976), so heavily relied upon by Petitioner. In Aldinger, the Court stated:

> The doctrine of ancillary jurisdiction...is bottomed on the notion that since federal jurisdiction in the principal suit effectively controls the property or fund under dispute, other claimants thereto should be allowed to intervene in order to protect their interests, without regard to jurisdiction.

Id. at 11 (footnote omitted). Accord, Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 375 n. 18 (1978). The resolution of the federal issues in the instant case involves a plan for the rehabilitation of the property in question to insure maximum public participation consistent with federal law, and said plan is "logical[ly] depend[ent]" upon the federal issues in dispute. See Kroger, supra at 377. The

University's participation, as holder of the redevelopment rights to the property, had become necessary. Its inclusion in the federal court decree was permissible.

2. The Third Circuit's Decision Does Not Raise The Issue Of Whether Federal Courts May Assert Jurisdiction Over The State-Law Claims Of Pendent Parties.

The supposed conflict in the circuit courts described by Petitioner involving the assertion of judicial authority over a non-diverse party with respect to a state-law claim is irrelevant to this case. The Third Circuit did not express any opinion as to whether a federal court could consider the merits of a state-law claim asserted against non-diverse pendent parties in a federal question case. Nor did the Third Circuit opine whether the proper test for determining whether to assume jurisdiction in a pendent party case is the "common nucleus

of facts" test set forth in United Mine Workers of America v. Gibbs, 383 U.S. 715 (1966). To the contrary, the Third Circuit did not opine on the law of pendent parties at all.

Thus, even assuming that Aldinger has left federal courts divided on the question of pendent party jurisdiction, this case is certainly not the proper vehicle for resolution of that issue.

3. This Case Involves No Issue Of Expansion Of Federal Court Jurisdiction.

The district court's implementation of the consent decree involves no novel issue of federal jurisdiction. Instead, the case before this Court merely reasserts two axioms: a federal court has the power to enforce the resolutions it makes of those disputes. Review could lead to nothing more than the

recapitulation of these indisputable principles. If, as Petitioner contends, the question of whether a district court may allow a pendent party claim against a non-diverse party which bears "no relationship to any conceivable federal interest" is of sufficient importance to merit this Court's attention, this case does not present that question.

CONCLUSION

This case turns on its unusual facts, however, the legal principle, a district court's jurisdiction to implement a Consent Decree resolving a federal question claim, is neither novel nor disputed. The Petition for Certiorari should be denied.

Respectfully submitted,

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